

BEFORE THE ARIZONA MEDICAL BOARD

In the Matter of

David Van De Wyngaerde, M.D.

License No. 17528
For the Practice of Allopathic Medicine
In the State of Arizona.

Case No. MD-09-1358A

**ORDER FOR LETTER OF REPRIMAND
AND PROBATION AND CONSENT TO
THE SAME**

David Van De Wyngaerde, M.D. ("Respondent") elects to permanently waive any right to a hearing and appeal with respect to this Order for Letter of Reprimand and Probation; admits the jurisdiction of the Arizona Medical Board ("Board"); and consents to the entry of this Order by the Board.

FINDINGS OF FACT

1. The Board is the duly constituted authority for the regulation and control of the practice of allopathic medicine in the State of Arizona.

2. Respondent is the holder of license number 17528 for the practice of allopathic medicine in the State of Arizona.

3. The Board initiated case number MD-09-1358A after receiving a report from the Board's Addiction Medicine Consultant ("AMC") indicating that Respondent tested positive for EthylGlucuronide ("EtG"), a metabolite of alcohol, in violation of his May 2007 Stipulated Rehabilitation Agreement ("SRA").

4. On May 8, 2007, Respondent entered into a confidential SRA and was prohibited from consuming alcohol. The SRA stipulated that in the event of a chemical dependency relapse, Respondent was required to promptly enter into an Interim Practice Restriction until completing long term residential treatment. On October 26, 2009, Board staff received notification from the AMC regarding Respondent's positive EtG test results and Respondent admitted to consuming alcohol. On October 29, 2009, Respondent

1 entered into an Interim Practice Restriction and underwent long term residential treatment.
2 On March 7, 2010, Respondent successfully completed treatment. The AMC reviewed
3 Respondent's treatment records and found that Respondent was safe to return to practice.
4 On March 17, 2010, Respondent entered into an Interim Consent Agreement for
5 participation in the Monitored Aftercare Program and the Interim Practice Restriction was
6 vacated.

7 CONCLUSIONS OF LAW

8 1. The Board possesses jurisdiction over the subject matter hereof and over
9 Respondent.

10 2. The conduct and circumstances described above constitute unprofessional
11 conduct pursuant to A.R.S. § 32-1401(27)(f) ("[h]abitual intemperance in the use of alcohol
12 or habitual substance abuse.") and A.R.S. § 32-1401(27)(r) ("[v]iolating a formal order,
13 probation, consent agreement or stipulation issued or entered into the board or its
14 executive director under the provisions of this chapter.

15 ORDER

16 IT IS HEREBY ORDERED THAT:

17 A.. Respondent is issued a Letter of Reprimand.

18 B. Respondent is placed on Probation for **five years** with the following terms
19 and conditions:

20 1. Participation¹. Respondent shall promptly enroll in and participate in the
21 Board's program for the treatment and rehabilitation of physicians who are impaired by
22 alcohol or drug abuse ("MAP"). Respondent's participation in MAP may be unilaterally
23 terminated with or without cause at the Board's discretion at any time after the issuance of
24

25 ¹ Respondent's MAP participation is retroactive to March 17, 2010,

1 this Order.

2 Respondent shall submit quarterly declarations under penalty of perjury stating whether
3 there has been compliance with all conditions of MAP. The declarations shall be submitted
4 to the contractor retained by the Board to administer the MAP program ("Contractor") on or
5 before the 15th of March, June, September and December of each year, beginning on or
6 before September, 2010.

7 2. **Relapse Prevention Group.** Respondent shall attend MAP's relapse
8 prevention group therapy sessions one time per week for the duration of this Order, unless
9 excused by the MAP relapse prevention group facilitator for good cause such as illness or
10 vacation. Respondent shall instruct the MAP relapse prevention group facilitators to
11 release to the MAP Contractor, upon request, all records relating to Respondent's
12 treatment, and to submit monthly reports to the MAP Contractor regarding attendance and
13 progress. The reports shall be submitted on or before the 10th day of each month.

14 3. **12 Step or Self-Help Group Meetings.** Respondent shall attend
15 ninety 12-step meetings or other self-help group meetings appropriate for substance
16 abuse and approved by the MAP Contractor, for a period of ninety days beginning no later
17 than either (a) the first day following Respondent's discharge from chemical dependency
18 treatment or (b) the date of this Order.

19 4. Following completion of the ninety meetings in ninety days,
20 Respondent shall participate in a 12-step recovery program or other self-help program
21 appropriate for substance abuse as recommended by the MAP Contractor. Respondent
22 shall attend a minimum of three 12-step or other self-help program meetings per week for
23 a total of twelve per month. Two of the twelve meetings must be Caduceus meetings.
24 Respondent must maintain a log of all self-help meetings. The MAP Contractor will provide
25 the log to Respondent.

1 5. **Approved Primary Care Physician.** Respondent shall promptly
2 obtain a primary care physician and shall submit the name of the physician to the MAP
3 Contractor in writing for approval. The approved primary care physician ("PCP") shall be
4 in charge of providing and coordinating Respondent's medical care and treatment. Except
5 in an *Emergency*, Respondent shall obtain medical care and treatment only from the PCP
6 and from health care providers to whom the PCP refers Respondent. Respondent shall
7 request that the PCP document all referrals in the medical record. Respondent shall
8 promptly inform the PCP of Respondent's rehabilitation efforts and provide a copy of this
9 Order to the PCP. Respondent shall also inform all other health care providers who
10 provide medical care or treatment that Respondent is participating in MAP.

11 a. "*Emergency*" means a serious accident or sudden illness that, if not
12 treated immediately, may result in a long-term medical problem or loss
13 of life.

14 6. **Medication.** Except in an *Emergency*, Respondent shall take no
15 *Medication* unless the PCP or other health care provider to whom the PCP refers
16 Respondent prescribes the *Medication*. Respondent shall not self-prescribe any
17 *Medication*.

18 a. "*Medication*" means a prescription-only drug, controlled substance,
19 and over-the counter preparation, other than plain aspirin, plain
20 ibuprofen, and plain acetaminophen.

21 7. If a controlled substance is prescribed, dispensed, or administered to
22 Respondent by any person other than PCP, Respondent shall notify the PCP in writing
23 within 48 hours and notify the MAP Contractor immediately. The notification shall contain
24 all information required for the medication log entry specified in paragraph 8. Respondent
25 shall request that the notification be made a part of the medical record. This paragraph

1 does not authorize Respondent to take any *Medication* other than in accordance with
2 paragraph 6.

3 8. **Medication Log.** Respondent shall maintain a current legible log of
4 all *Medication* taken by or administered to Respondent, and shall make the log available to
5 the MAP Contractor upon request. For *Medication* (other than controlled substances)
6 taken on an on-going basis, Respondent may comply with this paragraph by logging the
7 first and last administration of the *Medication* and all changes in dosage or frequency.
8 The log, at a minimum, shall include the following:

- 9 a. Name and dosage of *Medication* taken or administered;
- 10 b. Date taken or administered;
- 11 c. Name of prescribing or administering physician;
- 12 d. Reason *Medication* was prescribed or administered.

13 This paragraph does not authorize Respondent to take any *Medication* other
14 than in accordance with paragraph 6.

15 9. **No Alcohol or Poppy Seeds.** Respondent shall not consume
16 alcohol, any food, or other substance containing poppy seeds or alcohol.

17 10. **Biological Fluid Collection.** During all times that Respondent is
18 physically present in the State of Arizona and such other times as the MAP Contractor
19 may direct, Respondent shall promptly comply with requests to submit to witnessed
20 biological fluid collection. If Respondent is directed to contact an automated telephone
21 message system to determine when to provide a specimen, Respondent shall do so within
22 the hours specified. For the purposes of this paragraph, in the case of an in-person
23 request, "promptly comply" means "immediately." In the case of a telephonic request,
24 "promptly comply" means that, except for good cause shown, Respondent shall appear
25 and submit to specimen collection no later than two hours after telephonic notice to appear

1 is given. The MAP Contractor in its sole discretion shall determine good cause.

2 11. Respondent shall provide the MAP Contractor in writing with one
3 telephone number that shall be used to contact Respondent on a 24 hour per day/seven
4 day per week basis to submit to biological fluid collection. For the purposes of this section,
5 telephonic notice shall be deemed given at the time a message to appear is left at the
6 contact telephone number provided by Respondent. Respondent authorizes any person
7 or organization conducting tests on the collected samples to provide testing results to the
8 MAP Contractor.

9 12. Respondent shall cooperate with collection site personnel regarding
10 biological fluid collection. Repeated complaints from collection site personnel regarding
11 Respondent's lack of cooperation regarding collection may be grounds for termination
12 from MAP.

13 13. **Out of State Travel and/or Unavailability at Home or Office**
14 **Telephone Number.** Respondent shall provide the MAP Contractor with at least three
15 business days advance written notice of any plans to be away from office or home when
16 such absence would prohibit Respondent from responding to an order to provide a
17 biological fluid specimen or from responding to communications from the MAP Contractor.
18 The notice shall state the reason for the intended absence from home or office, and shall
19 provide a telephone number that may be used to contact Respondent.

20 14. **Payment for Services.** Respondent shall pay for all costs,
21 including personnel and contractor costs, associated with participating in MAP at
22 time service is rendered, or within 30 days of each invoice sent to Respondent.

23 15. **Examination.** Respondent shall submit to mental, physical, and
24 medical competency examinations at such times and under such conditions as directed by
25 the MAP Contractor to assist in monitoring Respondent's ability to safely perform as a

1 physician and Respondent's compliance with the terms of this Order.

2 16. **Treatment.** Respondent shall submit to all medical, substance
3 abuse, and mental health care and treatment ordered by the MAP Contractor.

4 17. **Obey All Laws.** Respondent shall obey all federal, state and local
5 laws, and all rules governing the practice of medicine in the State of Arizona.

6 18. **Interviews.** Respondent shall appear in person before the Board and
7 its Staff and MAP Contractor for interviews upon request, upon reasonable notice.

8 19. **Address and Phone Changes, Notice.** Respondent shall
9 immediately notify the MAP Contractor in writing of any change in office or home
10 addresses and telephone numbers.

11 20. **Relapse, Violation.** In the event of chemical dependency relapse by
12 Respondent or Respondent's use of drugs or alcohol in violation of the Order,
13 Respondent's license shall be **summarily suspended pending a hearing for**
14 **revocation.** In the alternative, Respondent may **SURRENDER HIS LICENSE** if he agrees
15 in writing to being impaired by alcohol or drug abuse. A.R.S. § 32-1452(G).

16 21. **Notice Requirements.**

17 (A) Respondent shall immediately provide a copy of this Order to all employers
18 and all hospitals and free standing surgery centers where Respondent currently has
19 privileges. Within 30 days of the date of this Order, Respondent shall provide the MAP
20 Contractor with a signed statement of compliance with this notification requirement. Upon
21 any change in employer or upon the granting of privileges at additional hospitals and free
22 standing surgery centers, Respondent shall provide the employer, hospital or free standing
23 surgery center with a copy of this Order. Within 30 days of a change in employer or upon
24 the granting of privileges at additional hospitals and free standing surgery centers,
25 Respondent shall provide the MAP Contractor with a signed statement of compliance with

1 this notification requirement.

2 (B) Respondent is further required to notify, in writing, all employers, hospitals
3 and free standing surgery centers where Respondent currently has or in the future gains
4 employment or privileges, of a chemical dependency relapse, use of drugs or alcohol in
5 violation of this Order and/or entry into a treatment program. Within seven days of any of
6 these events Respondent shall provide the MAP Contractor written confirmation of
7 compliance with this notification requirement.

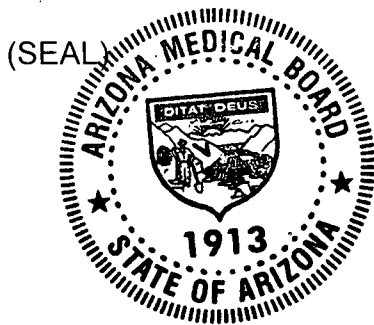
8 22. **Public Record.** This Order is a public record.

9 23. **Out-of-State.** In the event Respondent resides or practices as a
10 physician in a state other than Arizona, Respondent shall participate in the rehabilitation
11 program sponsored by that state's medical licensing authority or medical society.
12 Respondent shall cause the monitoring state's program to provide written reports to the
13 MAP Contractor regarding Respondent's attendance, participation, and monitoring. The
14 reports shall be due quarterly on or before the 15th day of March, June, September, and
15 December of each year, until the Board terminates this requirement in writing. The
16 monitoring state's program and Respondent shall immediately notify the MAP Contractor if
17 Respondent: a) is non-compliant with any aspect of the monitoring requirements; b)
18 relapses; c) tests positive for controlled substances; d) has low specific gravity urine drug
19 test(s), missed and/or late urine drug tests, or otherwise rejected urine drug tests; and e) is
20 required to undergo any additional treatment.

21 24. This Order supersedes all previous consent agreements and
22 stipulations between the Board and/or the Executive Director and Respondent.

23 25. The Board retains jurisdiction and may initiate new action based upon
24 any violation of this Order.

25 DATED AND EFFECTIVE this 10th day of June, 2010.



ARIZONA MEDICAL BOARD

By Amada Bickel
Lisa S. Wynn
Executive Director

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CONSENT TO ENTRY OF ORDER

1. Respondent has read and understands this Consent Agreement and the stipulated Findings of Fact, Conclusions of Law and Order ("Order"). Respondent acknowledges he has the right to consult with legal counsel regarding this matter.

2. Respondent acknowledges and agrees that this Order is entered into freely and voluntarily and that no promise was made or coercion used to induce such entry.

3. By consenting to this Order, Respondent voluntarily relinquishes any rights to a hearing or judicial review in state or federal court on the matters alleged, or to challenge this Order in its entirety as issued by the Board, and waives any other cause of action related thereto or arising from said Order.

4. The Order is not effective until approved by the Board and signed by its Executive Director.

5. All admissions made by Respondent are solely for final disposition of this matter and any subsequent related administrative proceedings or civil litigation involving the Board and Respondent. Therefore, said admissions by Respondent are not intended or made for any other use, such as in the context of another state or federal government regulatory agency proceeding, civil or criminal court proceeding, in the State of Arizona or any other state or federal court.

1 6. Upon signing this agreement, and returning this document (or a copy thereof)
2 to the Board's Executive Director, Respondent may not revoke the consent to the entry of
3 the Order. Respondent may not make any modifications to the document. Any
4 modifications to this original document are ineffective and void unless mutually approved
5 by the parties.

6 7. This Order is a public record that will be publicly disseminated as a formal
7 disciplinary action of the Board and will be reported to the National Practitioner's Data
8 Bank and on the Board's web site as a disciplinary action.

9 8. If any part of the Order is later declared void or otherwise unenforceable, the
10 remainder of the Order in its entirety shall remain in force and effect.

11 9. If the Board does not adopt this Order, Respondent will not assert as a
12 defense that the Board's consideration of the Order constitutes bias, prejudice,
13 prejudgment or other similar defense.

14 10. Any violation of this Order constitutes unprofessional conduct and may result
15 in disciplinary action. A.R.S. § § 32-1401(27)(r) ("[v]iolating a formal order, probation,
16 consent agreement or stipulation issued or entered into by the board or its executive
17 director under this chapter") and 32-1451.

18 11. ***Respondent has read and understands the conditions of probation.***

19 
20 _____
David Van De Wyngaerde, M.D.

DATED: 5-4-10

21
22 EXECUTED COPY of the foregoing mailed
this 10th day of June, 2010 to:

23 David Van De Wyngaerde, M.D.
24 Address of Record

25 ORIGINAL of the foregoing filed
this 10th day of June, 2010 with:

1 Arizona Medical Board
2 9545 E. Doubletree Ranch Road
3 Scottsdale, AZ 85258

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5 Arizona Medical Board Staff